Proposal for a MAD review. November 2011.

The legislative proposal for amending the 2003/6/EC Market Abuse Directive (onward MAD) and the proposal for Market Abuse Regulation (MAR) have been submitted by the EC to the Council and to the Parliament of the UE on the 20th of October. This proposal is based, among others, on the report by the High-level Group on Financial Supervision in the UE (Larosière Report, February 2009) that pointed that the Member States sanctioning regimes are regarded as in general weak and heterogeneous. In the previous analysis performed bye the CE, the most relevant problems have been identified for the effective implementation of the sanctions on financial services legislation in the UE: first, the sanctions are insufficiently dissuasive which results in ineffective enforcement of the Directive and, second, the definition of which insider dealing or market manipulation offences constitute criminal offences diverges considerably from Member State to Member State.
The proposal lays down a requirement for Member States to provide for minimum rules on the definition of the most serious market abuse offences and on minimum levels of criminal sanctions attached to them. The most remarkable items can be resumed as follows:

Criminal offences

The proposal defines which market abuse offences should be regarded as criminal offences by Member States and, therefore, subject to criminal sanctions. Concretely, two forms of market abuse conduct, namely insider dealing and market manipulation, should be regarded as criminal offences if committed intentionally.

Inciting, aiding and attempt

Inciting and aiding are also punishable in Member States as well as the attempt to commit on the offences with the exception of the attempt of improper disclosure of inside information and misleading information.

Criminal sanctions

Member States should take the necessary measures to ensure that criminal offences are subject to criminal sanctions which should be effective, proportionate and dissuasive.

Liability of legal persons.

Member States should take the necessary measures to ensure that legal persons can be held liable for the criminal offences committed on their benefit by any person who has a leading position within it, acting individually or as part of an organ holding, in both cases, a power of representation, or authority to take decision on behalf or to exercise control within the legal person.

Market Abuse Regulation (MAR)

It keeps pace with new market developments: extends its scope to, on one hand, any type of trading venues (MTFs, OTFs and even OTC transactions of financial instruments admitted to trading in any of the previous or regulates markets) and, on the other hand, to any kind of financial instruments (derivatives and commodities derivatives are also subject to some parts of the new Regulation).

It also clarifies which high frequency trading strategies constitute prohibited market manipulation, such as submitting order without and intention to trade but to disrupt a trading system (“quote stuffing”).

It extends the current reporting of suspicious transactions also to suspicious unexecuted orders and suspicious OTC transactions and it grants regulators to obtain telephone and data traffic records from telecoms operators or to access private documents or premises where a reasonable suspicious exists of market abuse.

It requires Member States to provide for the protection of whistleblowers and sets common rules where incentives

are offered for reporting information about market abuse. A new offence of attempted market manipulation is introduced to make it possible for regulators to impose a sanction in cases where someone tries to manipulate the market but does not succeed in actually trading.

Common principles are proposed that fines should not be less than the profit made from market abuse where this can be determined, and the maximum fine should not be less than two times any such profit.

The disclosure requirements for issuers on SME markets will be adapted to their needs, and issuers on such markets will be exempt from the requirement to draw up lists of insiders, unless the supervisor demands otherwise.

If you want to read the proposal, please, click on: http://ec.europa.eu/internal_market/securities/abuse/index_en.htm